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No. 63

In the Supreme Court of the United States

OCTOBER TERM, 1941

THOMAS W. WHITE, ET AL., FORMER COLLECTORS OF INTERNAL REVENUE FOR THE DISTRICT OF MASSACHUSETTS, PETITIONERS

v.

WINCHESTER COUNTRY CLUB

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE PETITIONERS

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OPINIONS BELOW

The opinion of the District Court (R. 59–77) is reported in 30 F. Supp. 142. The opinion of the Circuit Court of Appeals (R. 117–121) is reported in 117 F. (2d) 146.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on January 30, 1941 (R. 121). The

petition for a writ of certiorari was filed April 29, 1941, and was granted May 26, 1941. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether amounts paid to the Winchester Country Club for certain "privileges" constitute "dues or membership fees" subject to the tax imposed by Section 501 of the Revenue Act of 1926, as amended by Section 413 of the Revenue Act of 1928.

STATUTES AND REGULATIONS INVOLVED

The applicable statutes and regulations will be found in the appendix, *infra,* pp. 21–24.

STATEMENT

During the period from November 27, 1931, to January 9, 1935, the Winchester Country Club collected from its members and paid to the Collectors of Internal Revenue then in office amounts totaling $18,555.63 as taxes on "dues or membership fees" under the provisions of Section 501 of the Revenue Act of 1926, as amended by Section 413 of the Revenue Act of 1928 (R. 12–13, 38–39, 52–53). This sum represents a ten percent tax upon payments made for "Dues, Privileges, and Fees" des-

ignated in the Club's bylaws of 1929 as follows (R. 15–16, 41–42, 55):

Annual Dues	$9,344.38
Full Privileges and Limited Privileges	7,432.25
Family Privileges:	
Limited Privileges	1,697.00
Tennis Privileges	53.00
Full Privileges for sons between 21 and 25 years of age	29.00
	18,555.63

There is no dispute concerning the amount of $9,344.38 representing the tax upon "Annual Dues." The Club, however, brought suit to recover, on behalf of its members, the balance of $9,211.25, the amount of tax imposed upon the payments for the "privileges." The question is whether these payments for the "privileges" are "dues or membership fees" within the meaning of the statute.

Reference to the Club's bylaws indicates the nature of the various payments. Until 1929, the Club had Class A and Class B memberships. Class A memberships cost $75 and carried golf privileges; Class B memberships cost $40 and did not include golf privileges (R. 62). New bylaws were adopted in 1929 and were in effect during the years in which the taxes in controversy were exacted. The 1929 bylaws abolished Class A and Class B memberships by name and instead provided for "Annual Dues" of $50, which entitled the mem-

ber to all privileges except golf. The unlimited right to play golf, called "Full Privileges," cost a member an additional $50. A limited right to play golf at any time "except on Saturday afternoons, Sunday mornings, and holidays during April, May, June, September, October, and November" could be acquired by the additional payment of $35 for "Limited Privileges" (R. 66). The great majority of the Club's members acquired either limited or unlimited golf privileges (R. 105–106).

Until 1929, both Class A and Class B members were entitled to purchase "Associate Memberships" for others. Class A members, however, paid less than Class B members for associate memberships (R. 62). The 1929 bylaws, on the other hand, included no express designation of "Associate Memberships" but instead a member could acquire golf, tennis, and house privileges, known as "Family Privileges," for members of his family. Again, however, members who had not acquired any golf privileges had to pay more for "Family Privileges" than members who did possess golf privileges (R. 66, 67).

Under the 1929 bylaws a lady not eligible to family privileges was permitted to become a "special member of the Club with limited privileges." Her anual dues were $50 (R. 67). It is admitted that the amounts paid by these members were properly taxed (R. 68, 69–70).

The club year began January 1st (R. 68). Under the Club's laws, "dues and fees" were payable on March 1st (R. 67); the practice was to bill members during March for "dues" and "privileges" for the next year (R. 69). A member could acquire "privileges" either for himself or for his family quite informally; he simply informed the officers orally or in writing what privileges he wanted (R. 69). If privileges were requested prior to August 1st, the member was charged for the full year; if requested after that date he was charged for a half year (R. 109).[1] If a member did not expressly indicate the privileges which he wished, he was charged for the same privileges which he had previously held. In such a case, however, if he then notified the Club that he did not wish the privileges, no attempt was made to collect the amount charged for the unwanted privileges. (R. 69.)

After a claim for refund of $9,211.25 had been duly filed and rejected (R. 13–14), the Club on behalf of and under individual authorizations from its members (R. 4, 33–34, 48) instituted suits against the three Collectors of Internal Revenue to whom the taxes had been paid for the recovery of that amount. The District Court entered judg-

[1] The bylaws provided that "any member elected after August 1st shall pay one-half of the annual dues and fees" (R. 68).

ments for the Club (R. 31, 45, 58). A consolidated appeal was taken, and the Circuit Court of Appeals for the First Circuit affirmed the judgments of the District Court (R. 121).

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding that the amounts paid by club members for "privileges" were not paid as "dues or membership fees" within the meaning of the taxing statute.

2. In failing to hold that the amounts paid by club members for "privileges" were properly taxed as "dues or membership fees" within the meaning of the taxing statute.

3. In affirming the judgment of the District Court.

SUMMARY OF ARGUMENT

Since the Revenue Act of October 3, 1917, a federal excise tax has been imposed on "dues or membership fees" paid to any social or athletic club. Except for the general provision in the 1928 amendment to the Revenue Act of 1926 that "the term 'dues' includes any assessment irrespective of the purpose for which made," the terms "dues or membership fees" have never been defined by statute. Earlier regulations, however, had specified that "dues or membership fees" included extra payments made by club members when by these pay-

ments the members or their families acquired the right to the repeated use of club facilities over a period of time.

Those courts which have passed upon the issue of what are "dues or membership fees" have been in substantial disagreement in respect of both results and applicable tests. But a recognition of the basic nature of club operations furnishes a working test for identifying payments which should be included within the statutory terms. In general, any payment made by a club member for the right to the repeated and general use over a period of time of a common facility of the club should be considered to be an amount paid as "dues or membership fees," if the amount of payment is not fixed by each occasion of actual use but represents an apportionment of the cost of maintaining and operating that common facility. Under this general definition, the disputed payments in the instant case were taxable as "dues or membership fees."

ARGUMENT

THE PAYMENTS IN CONTROVERSY WERE DUES OR MEMBERSHIP FEES WITHIN THE MEANING OF THE TAXING STATUTE

Section 501 of the Revenue Act of 1926, as amended by Section 413 of the Revenue Act of 1928, appendix, *infra*, pp. 21–22, imposes a tax of 10 per cent upon "any amount paid * * * as dues or membership fees to any social, athletic, or

sporting club or organization * * *." Although a similar tax had been imposed by all Revenue Acts since the Revenue Act of October 3, 1917,[2] the term "dues or membership fees" was not further defined by statute until the enactment of the Revenue Act of 1928. This definition which was not, in turn, amended before the institution of this case [3] simply

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[2] Sec. 701 of the Revenue Act of October 3, 1917, 40 Stat. 300; Sec. 801 of the Revenue Act of 1918, 40 Stat. 1057; Sec. 801 of the Revenue Act of 1921, 42 Stat. 227; Sec. 501 of the Revenue Act of 1924, 43 Stat. 253. See also Internal Revenue Code, Sec. 1710 (U. S. C., Supp. V, Title 26, Sec. 1710).

[3] See Internal Revenue Code, Sec. 1712 (U. S. C., Supp. V, Title 26, Sec. 1712). The question in issue in the case at bar has, however, recently been the subject of legislative consideration, and section 543 of the Revenue Act of 1941 has redefined the term "dues" so as clearly to include the types of payments here involved. See footnote 12, *infra*. The legislative history of this redefinition is inconclusive in respect of the earlier intention of Congress. In its report on section 543, the Senate Finance Committee, clearly indicating its view that the section simply clarified its predecessor provisions, stated that "It believes the redefinition of the term 'dues' to be very helpful in avoiding litigation. Under existing law a number of privilege fees and assessments are subject to tax as club 'dues'. Some taxpayers have alleged either that there is an ambiguity in the present law or that it cannot be construed to cover certain types of fees. It is, therefore, desirable, in order to avoid litigation, to define in very direct terms what is intended to be covered by the term 'dues'." Sen. Rept. 673, 77th Cong., 1st Sess., p. 48. But cf. the report of the House Committee on Ways and Means, in which it is stated that the new section "redefines the term 'dues' to include certain privilege fees and

provided that "the term 'dues' includes any assessment irrespective of the purpose for which made."[4]

The Treasury Regulations promulgated under the Revenue Act of 1926, as amended in 1928, and under the Internal Revenue Code, have embodied this statutory definition without enlargement.[5] See appendix, *infra*, p. 22. But three editions of the Treasury Regulations[6] issued under the Rev-

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assessments not now subject to tax." H. Rept. 1040, 77th Cong., 1st Sess., p. 54. See also *id.*, pp. 31–32. In commenting on the apparent disparity between the two reports, however, the Chairman of the House Committee on Ways and Means announced that "With respect to the club-dues tax, I desire to state that on page 54 of 'your Committee's report on the bill it is stated that, for the purposes of the tax on club dues, the term 'dues' is redefined to include certain privilege fees and assessments not now subject to the tax. Inasmuch as the taxability of the fees and assessments referred to has not yet been finally determined by the courts and is the subject of pending litigation, it would be more accurate to describe the redefinition of the term 'dues' in the manner adopted in the report of the Finance Committee of the Senate * * *." 87 Cong. Rec. 7614, Sept. 16, 1941.

[4] Sec. 501 of the Revenue Act of 1926, 44 Stat. 9 (U. S. C., Title 26, Secs. 950, 951, 952), as amended by Sec. 413 (a) of the Revenue Act of 1928. Earlier Regulations had stated that assessments for capital expenditures were not taxable. See Art. 9, Regulations 43 (Part 2) (1926 Rev.).

[5] Article 40, Treasury Regulations 43 (1928 and 1932 Rev.), Sec. 101.41, Treasury Regulations (1940 Ed.).

[6] Regulations 43 (Part 2) under the Revenue Act of 1921 and revised April 18, 1922; Treasury Regulations 43 (Part 2) under the Revenue Act of 1924, approved September 13, 1924.

enue Acts of 1921 and 1924 specifically treated the general question now at bar. Article 9 of these earlier regulations provided:

> * * * also [subject to the tax] are extra charges which are imposed upon members for the privilege of using certain additional facilities for a period of time, as, for example, an additional charge of $6 per annum imposed upon members of a country club for the privilege of using the golf links.

As illustrations of the application of the tax, the regulations also set out the following:[7]

* * * * *

> (7) The members of a certain curling club pay annual dues of $20. By the payment of $10 extra per year the privilege of skating on the club's rink can be secured by the member's family. A payment of this extra $10 is taxable as a membership fee.

* * * * *

> (13) A certain golf club, the dues and fees of which are taxable, issues to wives of members cards entitling them to the use of the course for one year, making a charge of $10

[7] Illustration (7) also appeared in the Treasury Regulations under the Revenue Act of 1918; Treasury Regulations 43 (Part 2) approved March 28, 1919, Article 12. Both illustrations appeared in Treasury Regulations 43 (Part 2) revised December 3, 1920, Article 12. Neither example appeared in Treasury Regulations 43 (1926) under the Revenue Act of 1926.

therefor. The amounts paid for such cards are taxable.

Against the background of these regulations, the Revenue Act of 1926 was adopted and subsequently enlarged in 1928. A construction of the statute in harmony with the pre-existing regulations is therefore justified. *Helvering* v. *Winmill*, 305 U. S. 79, 83; see also *Ardsley Club* v. *Darcy*, 40 F. (2d) 293 (N. D. N. Y.).

The judicial constructions which have been given to the phrase "dues or membership fees" may be found in a limited number of cases. The Government has prevailed in *Foran* v. *McLaughlin*, 59 F. (2d) 158 (C. C. A. 9), certiorari denied, 287 U. S. 637; *Merion Cricket Club* v. *United States*, 119 F. (2d) 578 (C. C. A. 3), petition for certiorari granted October 13, 1941, No. 83, present Term; *Hardt* v. *McLaughlin*, 25 F. Supp. 684 (E. D. Pa.). The taxpayer has prevailed in *Weld* v. *Nichols*, 9 F. (2d) 977 (Mass.); *Baltimore Country Club* v. *United States*, 7 F. Supp. 607 (Md.); *Williamson* v. *United States*, 12 F. Supp. 26 (W. D. N. C.), and *Philadelphia Cricket Club* v. *United States*, 30 F. Supp. 141 (E. D. Pa.).

An examination of the cited cases fails to reveal substantial consistency among the courts with respect to the meaning to be given to the term "dues or membership fees." The earliest case was *Weld* v. *Nichols*, *supra*, where the term was stated to in-

clude "only fixed and definite charges applicable to all members of each particular class of membership." This definition fails to resolve the basic inquiry with respect to what constitutes a class of membership, and its inadequacy is confirmed by the divergent results obtained in cases which purport to apply it. Thus in *Hardt* v. *McLaughlin*, 25 F. Supp. 684 (E. D. Pa.), it was concluded that payments for golf privileges, made in addition to annual dues payments by those who elected to play golf, created a class of "golf members" although there was no such class, *eo nomine*, designated in the club's by-laws. But in the *Baltimore Country Club* case, *supra*, it was concluded that payments for golf privileges created no special class, since the fees were not assessed upon any group or class of members, and payment was not required of any member (p. 608) "unless he desires to play golf."

In *Foran* v. *McLaughlin*, *supra*, emphasis was placed upon the recurring contractual nature of the charge.[8] Under this test taxation has turned upon the irrelevant mechanics of the particular club's business methods. Whether the obligations are of a recurring contractual nature, so as to fall within the *Foran* rule, has hinged upon whether the club member who exercises annual golf privi-

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[8] The dissenting opinion in *Merion Cricket Club* v. *United States*, *supra* (p. 580), apparently construed the rule of the *Foran* case to require indefinitely recurring obligations.

leges can drop such privileges for the succeeding year only by notifying the club before the beginning of that year, or whether the club pursues the more accommodating policy of permitting its members to drop the privileges for the succeeding year simply by not playing or by other informal notice. In the first situation, the payments have been held to be taxable;[9] in the second, they are immune.[10] So unreal, indeed, have the distinctions become that the courts have unwittingly set tests under which scarcely any payments could qualify as dues or membership fees. For the obligation to pay annual dues does not commonly outrun the desire of the member to retain his membership.

This diversity among the courts, both in result and in theory, demonstrates the need for a more certain test. We think that the inquiry should be of a more substantial nature than was adopted by the court below and that a clear understanding of the import of the word "dues" is essential.

The word "dues" includes not only any payment legally due, but also any "toll, tribute, *fee,*

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[9] *Hardt* v. *McLaughlin, supra;* Judge Jones concurring in *Merion Cricket Club* v. *United States, supra,* at p. 580.

[10] *Philadelphia Cricket Club* v. *United States, supra;* see also the decision of the court below. A related but equally insubstantial test to determine whether the obligation is recurring and contractual has been whether the member may drop the privilege at the end of the half year without paying for the unused half. *Williamson* v. *United States,* 12 F. Supp. 26 (W. D. N. C.). Compare the *Philadelphia Cricket Club* case with the *Hardt* case, *supra.*

or the like." *Murray*, New English Dictionary. [Italics supplied.] Since clubs are voluntary associations and the payment of a membership fee can become a contractual duty only at the will of the member, no reason suggests itself for limiting the expression "dues or membership fees" only to payments legally due. As a contractual obligation, a club charge for dues does not differ in effect from a contractual duty to pay for a dinner at the club; but the latter admittedly is not a payment of "dues or membership fees." A club debt is not synonymous with club dues or membership fees.

The basic financial principle upon which clubs are operated is that the expenses of operation are shared by the members.[11] (See opinion of Judge Clark in *Merion Cricket Club* v. *United States*, *supra*.) If in any case the apportionment of expenses is not of a general nature, but instead is specifically allotted in accordance with the particular member's actual use, this basic attribute of a club operation is lacking. The recognition of this distinction furnishes the foundation for a definition of "dues or membership fees." We submit that any payment made by a club member for the right to the repeated and general use over a period of time of a common facility of the club

[11] In early usage the word "club" connotated a combination to share expenses. See *Murray*, New English Dictionary.

should be considered to be an amount paid as "dues or membership fees" if the amount of payment is not fixed by each occasion of actual use but represents an apportionment of the cost of maintaining and operating that common facility.[12]

It is clear that the payments for "privileges" in this case fall within this suggested rule. Upon the payment of annual dues of $50, a member receives "all the privileges of the club except golf." Payment of an additional $50 entitles the member to "Full Privileges", which are defined as "all the privileges of the club." Clearly, the only further "use" privilege[13] acquired by the additional payment is that of the unlimited right to play golf. And, in turn, this further privilege to play golf is in essence the right to the repeated and general use of a common facility of the club, the golf course. The amount of payment is not fixed by the occasion of actual use but represents

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[12] Section 543 of the Revenue Act of 1941, Pub. No. 250, 77th Cong., 1st Sess., redefines the term "dues" as follows:

> DUES.—The term "dues" includes any assessment, irrespective of the purpose for which made, and any charges for social privileges or facilities, or for golf, tennis, polo, swimming, or other athletic or sporting privileges or facilities, for any period of more than six days * * *.

[13] A member who purchased either "Full Privileges" or "Limited Privileges" was also entitled to a lower rate for the purchase of "Family Limited Privileges" than that charged to members who paid only the basic $50 dues.

a general apportionment of the cost of operating that facility.[14] In effect, two general types of membership are created: That minority which paid only the admitted dues of $50, and those who paid $100 for "dues" and "Full Privileges" combined.

The bylaws further permit members to purchase "Limited Privileges" for $35 in addition to the basic membership charge of $50. A holder of "Limited Privileges" may use all the facilities of the club at any time, except that he may not play golf on Saturday afternoons, Sunday mornings, and holidays during April, May, June, September, October, and November. Once again, although the member who holds "Limited Privileges" is excluded from golf on these certain days, the payment is clearly not fixed by actual use and is simply a variant form of a golf membership.

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[14] John Abbott, the club's former president, testified that an equal amount of money was invested in the buildings, on the one hand, and "in the land and the improvement of the course" on the other, and that there was, therefore, a "fifty-fifty" apportionment in fixing the charges for golf "privileges" (R. 83). That a club member could drop the extra privileges at the end of the half-year without liability for the succeeding period falls far short of making the payment one for the occasion of actual use. The abatement of payments due was simply a matter of accommodation to the club's members and not an absolute right. And once the member arranged for the privilege, the payment was due whether he played a few or many times. His failure to make use of the privilege did not entitle him to a refund for the past half-year during which he did not play (R. 101).

Also contested in this action is the taxation, as dues or membership fees, of the payments made by members for "Family Privileges." These payments are of three types: "Family Limited Privileges" which include unlimited house and tennis privileges and golf privileges except on certain days; "Family Tennis Privileges" and "Full Privileges for sons between 21 and 25 years of age." These payments, too, represent general charges for the right to the repeated use of common facilities of the club.

To recognize a rigid compartment of "privileges," unrelated to dues or membership fees, is to sacrifice substance for form and to disregard realities. An analysis of the payments here in dispute and of the rights which were received in return for these payments will readily establish the artificiality and illogic of attempts to distinguish them from dues. The club itself has failed in such attempts, for rights acquired upon payment for "privileges" overlap and become indistinguishable from rights acquired upon payment of "dues." At many points in respect both of terminology and of what the members actually received, the "privileges" merge with rights bought by dues payments.

The history of the club's bylaws strikingly illustrates the absence of any real distinction between payments for "privileges" and "dues." Before 1929, the club provided for Class A and

Class B memberships (R. 62). Class A memberships cost $75 and included golf privileges. Class B memberships cost $40 and did not carry golf privileges. The new bylaws abolished this terminology and fixed $50 dues for all privileges except golf, and an additional $50 for "Full Privileges," i. e., unlimited golf privileges. Thus the rights acquired by "Full Privilege" members under the present bylaws were identical with the rights acquired by Class A members under the old bylaws. The only difference is that under the new bylaws, the cost of these rights rose from $75 to $100.[15] That payments for Class A membership should be taxable since imposed upon all the members belonging to a special class of membership and payments for "Full Privileges" should be immune from taxes is an illogical result.

Similarly, the club's present bylaws fail in the impossible task of separating "privileges" from rights acquired by payment of dues. This be-

[15] The old bylaws permitted golf playing members to purchase associate memberships for an amount less than that charged non-golf playing members (R. 62). This may be compared with the 1929 bylaws which require a member who has not acquired "Full Privileges" or "Limited Privileges" to pay a larger fee for "Family Limited Privileges" than is required of members who possess such privileges. (See footnote 17.) The provision in the earlier bylaws limiting the number of members having golf privileges to 425 is included in the new bylaws as a limitation upon those members who may have "Full Privileges" (R. 62, 65). Subsequently, the limitation upon the number of full privilege members was enlarged to 475 (R. 65).

comes apparent upon comparison of "Limited Privileges" (see *supra*, p. 16) with "special memberships," payment for which is admitted to be taxable as dues or membership fees. The club's bylaws provide that a woman ineligible to "Family Privileges" may become a "special member with limited privileges"[16] upon the annual payment of $50. The privileges available to a special member are identical with those acquired by a member who has purchased "Limited Privileges" except that the former is subject to a different restriction in respect of the use of the golf course on Saturday afternoons, Sundays, and holidays.[17] There is obviously no distinction in substance between the single payment for "Dues" made by a special member and the two payments for "Dues" and for "Limited Privileges" made by limited privilege members.[18] There ought to be no difference in their designation for tax purposes.

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[16] The bylaws (R. 66) define "Limited Privileges" as "unlimited house and tennis privileges and the golf privileges except on Saturday afternoons, Sunday mornings and holidays during April, May, June, September, October, and November."

[17] Special members, all of whom are women, are subject to the rule that "Women shall not be permitted to use the course on Open Tournament Days, Saturday afternoons between one and six o'clock, Sundays and holidays until after one o'clock" (R. 101). Thus in fact the rights acquired by special members were identical to those acquired by women with "Limited Privileges."

[18] Nor has the club succeeded in compartmentalizing "dues" and "privilege" payments in other respects: (1) Pay-

CONCLUSION

The judgment of the court below should be reversed.

Respectfully submitted.

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OCTOBER 1941.

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ment of the basic $50 for membership carries with it all the "privileges" except golf, and including "tennis privileges" (R. 66). It is conceded that this entire payment is taxable. Yet it is contended that "Family Tennis Privileges" are not, although the actual privilege in respect of tennis is precisely the same. (2) Proportionate payment of annual dues and fees is the same for any member elected after August 1 (R. 68). (3) Adjustment of dues was available as well as adjustment of "privilege" payments (R. 93).

APPENDIX

Revenue Act of 1928, 45 Stat. 791:

SEC. 413. CLUB DUES TAX.

(a) Section 501 of the Revenue Act of 1926 is amended to read as follows:

SEC. 501. (a) There shall be levied, assessed, collected, and paid a tax equivalent to 10 per centum of any amount paid—

"(1) As dues or membership fees to any social, athletic, or sporting club or organization, if the dues or fees of an active resident annual member are in excess of $25 per year; or

"(2) As initiation fees to such a club or organization, if such fees amount to more than $10, or if the dues or membership fees, not including initiation fees, of an active resident annual member are in excess of $25 per year.

"(b) Such taxes shall be paid by the person paying such dues or fees.

"(c) There shall be exempted from the provisions of this section all amounts paid as dues or fees to a fraternal society, order, or association, operating under the lodge system, or to any local fraternal organization among the students of a college or university. In the case of life memberships a life member shall pay annually, at the time for the payment of dues by active resident annual members, a tax equivalent to the tax upon the amount paid by such a member for dues or membership fees other than

assessments, but shall pay no tax upon the amount paid for life membership.

"(d) As used in this section, the term 'dues' includes any assessment irrespective of the purpose for which made; and the term 'initiation fees', includes any payment, contribution, or loan required as a condition precedent to membership, whether or not any such payment, contribution, or loan is evidenced by a certificate of interest or indebtedness or share of stock, and irrespective of the person or organization to whom paid, contributed, or loaned" (U. S. C., Title 26, Secs. 950, 951, 952).

Treasury Regulations 43 (1928 Rev.) (Part II):[19]

ART. 40. *Dues or membership fees.*—The Revenue Act of 1928 imposes a tax of 10 per cent on any amount paid as dues or membership fees, including all assessments (and also including penalties incurred by failure to pay promptly), to any club which is within the terms of the act: *Provided*, That the dues or fees, including all assessments (but not including penalties incurred by failure to pay promptly), of an "active resident annual member" of such club are in excess of $25 per year. "An active resident annual member" is a member who is neither a life nor a nonresident member, but who, in other respects, enjoys full club privileges, as distinguished from the restricted privileges enjoyed by a person holding an associate or other partial membership.

[19] Article 40 of the 1932 revision of Treasury Regulations 43 is identical with the 1928 revision except that in the first sentence the words "Section 501" are substituted for "The Revenue Act of 1928."

The term "dues" is defined by the act as including any assessment, irrespective of the purpose for which made. Therefore, assessments for capital expenditures will not be exempt from tax when paid on and after June 29, 1928, provided the sum of the assessments and dues to be paid by active resident annual members exceeds $25 per year.

Thus in the case of a club or organization the regular dues or membership fees of which are less than $25 a year, but which levies an assessment on its active resident annual members, if the regular dues or membership fees, plus the assessment, exceed $25 per year, the tax is applicable. The tax would likewise apply in the case of a club or organization which collects no regular dues or membership fees but meets its expenses by levying assessments on its members as funds are required, provided, of course, the assessments aggregate more than $25 per year for members who enjoy the full privileges of the club or organization.

Where the dues or membership fees, including assessments, determined in the manner herein outlined, of an active resident annual member are in excess of $25 per year, dues or membership fees paid by other classes of members, whether or not they are in excess of $25 per year, are subject to the tax. A fine imposed for the violation of rules promulgated by a club or organization would be neither dues nor membership fees within the meaning of the act, and therefore not taxable.

Examples— * * *

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(5) A certain golf club has two classes of members. Class A members pay $40 per

year dues and are entitled to the full privileges of the club, including the use of the golf course. Class B members pay $25 per year dues and are entitled to the privileges of the clubhouse, but do not enjoy the privilege of the golf course. The total dues of $40 paid by class A members are subject to tax, and, since the dues of such members are in excess of $25 per year, the dues of $25 paid by class B members are also subject to tax.

(6) A certain golf club charges a "green" fee of $1 for each guest that uses the course. Such a fee is not paid "as dues or membership fees," and is, therefore, not taxable as such.

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(8) A tennis club in which the annual dues are $25 levies an assessment of $2 per year on each member to cover cost of tennis balls. The dues, fees, and such assessments paid by members of this club are taxable.

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U. S. GOVERNMENT PRINTING OFFICE: 1941